IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

RCRev..No. 331 of 2005

RCA.2/1999 of RENT CONTROL APPELLATE AUTHORITY, PATHANAMTHITTA
RCP.15/1996 of RENT CONTROL COURT, THIRUVALLA
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PETITIONER/RESPONDENT/COUNTER PETITIONER:

THOMAS MATHEW,
THUNDIYIL VEEDU, NEDUMPURAM VILLAGE,
THIRUVALLA TALUK.

BY ADV. SRI.T.R.RAMAN PILLAI(SR.)
SRI.LALJI P.THOMAS

RESPONDENTS/APPELLANTS/PETITIONERS:

1. ACHAMMA MATHEW, IKKARAMANGALATH VEEDU,
THUKALASSERI MURI, THIRUVALLA VILLAGE,
THIRUVALLA TALUK.

2. GEORGE MATHEW, S/O. ACHAMMA MATHEW
DO. DO.

BY ADV. SRI.JACOB P.ALEX (CAVEATOR)
R1 & R2 SRI.S.VENKATASUBRAMONIA IYER(SR.)
SRI.JACOB P.ALEX

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

R.C.R.No. 331 of 2005

ORDER

Balachandran, J.

The tenant is the revision petitioner. The respondents filed R.C.P.No.15/96 for an order of eviction of the petitioner under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act') alleging that the scheduled building is required for the residence of the first respondent and to run a day care centre. The claim was negatived by the Rent Control Court, but was allowed by the appellate authority in R.C.A.No.2/99. According to the first respondent, while she was in Singapore along with her husband, she had worked in a Nursery School and is experienced in conduct of baby care centre.

2. The appellate authority observed that the claim of the first respondent for the scheduled

building for her separate residence and for commencing a day care centre for babies has not been seriously challenged from the side of the petitioner/tenant, while he was examined. The first respondent also gave evidence that her son's business at Bangalore met with failure and his family members are also residing with her. The appellate authority, appreciating the evidence, observed that the intention of the first respondent is to have a separate residence to avoid disharmony in the joint residence of herself, her son, his wife and children, though it is not so divulged. It was also observed that primarily, it is for the first respondent/landlady to decide as to whether she should have a separate residence or to continue residence with her son, daughter-in-law and grand children. The desire of the first respondent to set up a separate residence and to conduct the proposed day care centre cannot be said to be lacking in bona fides or that it is a ruse for eviction.

3. The further contention that the first respondent/landlady is aged 73 is no ground to hold that she cannot reside separately or that she may not conduct the day care centre. It has to be remembered that she was only 64 years old at the time of filing of the rent control petition and she herself has given evidence as PW2 before the Rent Control Court. In the circumstances, we agree with the finding of the appellate authority that the need advanced by the first respondent/landlady to have vacant possession of the scheduled building for her to set up independent separate residence and to conduct a day care centre is bona fide.

4. The appellate authority also found that the first proviso to Section 11(3) of the Act does not bar the claim as the first respondent/landlady is not having in her possession another building of her own for her requirement. The fact that she was in possession of a portion of a commercial building was found not to dis-entitle her from claiming vacant possession of the scheduled building and

failure to disclose that aspect also was rightly found not fatal, as both parties had knowledge of existence of such possession and the contentions were also met at the trial.

5. The claim for protection under the second proviso to Section 11(3) of the Act was also found ineligible to the petitioner, as he had not pleaded in the counter that he is mainly depending for his livelihood on the income derived from the hotel business run by him in the scheduled building and that there are no other suitable buildings available in the locality for him to shift his hotel business. It was also found that the petitioner/tenant was conducting another hotel near the courts at Thiruvalla, which functions on all days except on holidays; that he is also conducting Canteen in the N.G.O. Co-operative Society and that there is no evidence furnished to show that the income from the business run in the scheduled building is his main source of livelihood. The appellate authority further observed that the

evidence established that the monthly income from the scheduled building was Rs.3,000/-, whereas, the monthly rent is Rs.2,200/- and therefore, the balance Rs.800/- cannot, certainly, be the main source of income for the livelihood of the petitioner/tenant and that, in fact, he had not made such a claim as well. The petitioner also was silent while tendering evidence as CPW2 as regards non availability of other buildings in the locality for him to shift his business. For all these reasons, it was being rightly found by the Rent Control Appellate Authority that the first respondent/landlady is entitled to have an order of eviction on the ground of bona fide need of the scheduled building for her independent residential occupation and for conducting a day care centre. The eviction ordered under Section 11(3) of the Act by the Rent Control Appellate Authority in reversal of the order of the Rent Control Court is correct, legal and proper and we concur with the finding of the appellate authority on that aspect. This

revision, consequently, deserves to be dismissed.

6. Finally, it is urged by the learned counsel for the petitioner that some breathing time may be granted to the petitioner/tenant to surrender vacant possession of the scheduled building to the respondent/landlady. We are of the view that the request made is reasonable and has to be allowed.

In the result, we dismiss this Rent Control Revision. At the same time we grant the petitioner time till 31.12.2007 to surrender vacant possession of the scheduled building to the first respondent/ landlady on the following conditions:

i. that he shall deposit the entire arrears of rent, if any, in the court below with a detailed statement as to its correctness within three weeks from today.

ii. that he shall file an affidavit within one month from today, reporting that all arrears of rent are cleared and unconditionally undertaking that he will surrender vacant possession of the scheduled building to the respondent/landlady

positively on or before 31.12.2007 and that he will continue to pay the future monthly rents on the due dates itself till he actually surrenders vacant possession of the scheduled building to the respondent/landlady and

iii. that in case the petitioner fails to comply with the above conditions, he shall not be entitled to the benefit of continuing in occupation of the scheduled building till 31.12.2007 and shall be liable to be evicted immediately on the expiry of the aforesaid one month in execution of the order of eviction passed against him.

(J.B.Koshy, Judge)

18th June, 2007

(K.P.Balachandran, Judge)

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